December 6, 2015

VIA ELECTRONIC SUBMISSION

RE: Arizona Heath Care Cost Containment System (AHCCCS) Draft Section 1115 (1315) Demonstration Waiver Request

The Medicare Rights Center (Medicare Rights) is pleased to submit comments on Arizona's draft demonstration waiver request for the five year period beginning on October 1, 2016.[1] Medicare Rights is a national, nonprofit organization that works to ensure access to affordable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Each year, Medicare Rights provides services and resources to over 2 million Medicare beneficiaries, family caregivers, and professionals.

The following comments are informed by our experience working with Medicare beneficiaries and their families, particularly those dually eligible for Medicare and Medicaid. In New York State, we work closely with the Department of Health on the implementation of the Fully Integrated Dual Advantage (FIDA) program through our leadership on the Coalition to Protect the Rights of New York's Dually Eligible (C-PRYDE).[2]

Through those efforts, we are witness to both the positive and negative effects that Medicaid changes can have on a beneficiary's access to care. For additional information, please contact Casey Schwarz, Senior Counsel for Education and Federal Policy, at CSchwarz@medicarerights.org or 212-204-6271 and Stacy Sanders, Federal Policy Director, at SSanders@medicarerights.org or 202-637-0961.

Medicaid waivers under the Social Security Act should be limited and meet the strict requirements of the statute. The Social Security Act grants the Secretary of the United States Department of Health and Human Services limited authority to waive the requirements of the Medicaid Act. The Social Security Act allows the Secretary grant a "[w]aiver of State plan requirements" in 42 U.S.C. § 1396a in the case of an "experimental, pilot, or demonstration project."[3] The Secretary may only approve a project which is "likely to assist in promoting the objectives" of the Title XIX and may only "waive compliance with any of the requirements [of the act] … to the extent and for the period necessary" for the state to carry out the project.[4]

We believe that many of the Arizona proposals fail to meet these requirements because the requests are not "experimental" and are not "likely to assist in promoting the objectives" of the Medicaid program. Specifically, the requests for lifetime five year limits on enrollment in Medicaid, mandatory work requirements, premiums, increased copayments, and the wholesale elimination of transportation benefits do not serve any experimental

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[1] Arizona Health Care Cost Containment System Waiver Proposal, available at http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/az/az-hccc-pa2.pdf
[2] *See* www.nyduals.org
[3] 42 U.S.C. § 1315(a) ("section 1315").
[4] *Id.*

purpose. Instead, they simply erect barriers to participation in the Medicaid program and to needed care. Below we provide more detailed comment on specific proposals.

- **Added premiums and cost sharing:** Research demonstrates that premiums in Medicaid and the Children's Health Insurance Program (CHIP) are proven barriers to Medicaid enrollment.[5] In addition, empirical research consistently shows that higher copayments lead low-income persons to forgo essential health care services due to the cost.[6] We are particularly concerned about the cost sharing proposal increasing cost-sharing for non-emergency use of the Emergency Department (ED). The proposal defines non-emergency use of the ED in a strikingly narrow way, waiving cost-sharing only if the person is admitted to the hospital or if there is not a community health center, rural health center, or urgent care center within 20 miles of the hospital.

  This departure from the "prudent layperson" standard established in Medicaid regulations[7] is even more problematic because the request does not require that the alternative center be available or accessible to the person at the time of the visit. It is also unclear whether dually eligible individuals will be subject to the increased cost sharing described here. The request explicitly carves dually eligible individuals out of the premium payment requirement, but does not address the cost-sharing requirements directly.

- **Elimination of the non-emergency transportation benefit:** We are also concerned about the elimination of non-emergency transportation as a benefit, particularly in conjunction with the imposition of a missed-appointment "strategic copayment." It is difficult to see what non-cost saving, experimental purpose such a proposal could serve, or how erecting such barriers to care is consistent with the requirement that waivers further the purpose of the Medicaid program.

- **Lacking detail in the proposed Delivery System Reform Incentive Payment (DSRIP) model**. We are concerned that the DSRIP proposal included in the request is insufficiently transparent, and may create barriers to care and insurance for lower income individuals. We echo the comments of Arizona stakeholders, including those in the comments submitted by Susan G. Komen Central and Northern Arizona, which call for a transparent, inclusive, and diverse process to develop DSRIP initiatives that improve care quality and value without disincentivizing enrollment or creating barriers to care.

We find that some requests in the waiver are neutral or beneficial, but these are outweighed by problematic proposals. For instance, we fully support the continued payment of Part B premiums for those individuals who receive Arizona Long Term Care System (ALTCS) services but do not qualify for the Medicare Savings Program or other buy-in. Overall, however, the request fails to meet the requirements established by Medicaid law and the proposals risk significant harm to low-income beneficiaries. As such, we encourage CMS to review it very critically.

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[5] Laura Snyder and Robin Rudowitz, "Premiums and Cost Sharing in Medicaid: A Review of Research Findings" Kaiser Commission on Medicaid and the Uninsured, February 2013 http://kff.org/Medicaid/issue-brief/premiums-and-cost-sharing-in-medicaid-a-review-of-research-findings/; Jill Boylston Herndon et al., *The Effect of Premium Changes on SCHIP Enrollment Duration*, 43 Health Services Research 458-77 (2008).

[6] Jack Hadley and John Holahan, "Is Health Care Spending Higher Under Medicaid or Private Insurance?" Inquiry, 40:323-42, Winter 2003-2004; Laura Snyder and Robin Rudowitz, "Premiums and Cost Sharing in Medicaid: A Review of Research Findings" Kaiser Commission on Medicaid and the Uninsured, February 2013 http://kff.org/Medicaid/issue-brief/premiums-and-cost-sharing-in-medicaid-a-review-of-research-findings/

[7] *See* 42 C.F.R. § 447.51 and 42 C.F.R. § 438.114.